

pursuant to Lombardy Regional Law 94/1980. By this request, Frendo sought approval for the closure of two landfills and the opening of another landfill located at the Orzinuovi plant. *See id.* ¶ 6, Ex. E, pp. 41-54, Roberts Aff. ¶ 14, Ex. M. In response to that request, on March 17, 1982, the Lombardy Region sent a notice asking for supplemental documentation. *See* Pls.' Resp. to Defs.' 56-1 ("Pls.' Resp.") ¶ 11, Pls.' Ex. E, ¶¶ 6(c)-(e). Because of the failure to supply the requested information, on November 8, 1982, the Region informed Frendo officials that a denial of authorization was being processed. *See id.* By letter dated May 31, 1983, Frendo withdrew the September 1980 application for authorization to open the other landfill and submitted a request for authorization to temporarily store waste within the Orzinuovi plant. *See* Defs.' 56-1 Statement ¶ 12, Roberts Aff. ¶ 15, Ex. N. In response to this subsequent request, on October 25, 1983, the Lombardy Region rendered Deliberation No. III/32537, a statement officially acknowledging "the closing of the landfill disposal facility located" at the Orzinuovi plant. *Id.* ¶ 13, Roberts Aff. ¶ 13, Ex. L. The Deliberation directed Frendo to submit, within three months, a proposed environmental restoration plan prepared in cooperation with the Provincial Administration of Brescia, the local authority responsible for verifying implementation of the plan. *See id.* Shortly thereafter, on December 21, 1983, the Province of Brescia acknowledged receipt of the Deliberation confirming the closing of the landfill disposal facility at the plant and requested that Frendo forward documentation illustrating its proposed environmental restoration plan for the site. *See id.* ¶ 14, Roberts Aff. ¶ 16, Ex. O. Following an April 19, 1984 on-site inspection of the Orzinuovi plant, on April 30, 1984, the Province issued an official acknowledgment verifying compliance with the regulatory program. *See id.* ¶ 15, Roberts Aff. ¶ 3, Ex. B, pp. 117-119, Roberts Aff. ¶ 12, Ex. K, Roberts Aff. ¶ 17, Ex. P. On September 8, 1993, the Province of Brescia's Waste Control Office prepared a chronology of events regarding the landfill situation at the Orzinuovi plant. *See* Roberts Aff. ¶ 3, Ex. B, p. 55, Ex. H. This report states that, "after DPR 915/82 went into effect, Frendo permanently closed the landfill as evidenced by deliberation no. 32537 of the Lombardy Region dated October 25, 1983." *Id.* Ex. H, p. 3. Italian officials have never advised Frendo of a deficiency in any of its notifications or approvals. *See* Roberts Aff. ¶ 3, Ex. B, pp. 93-94.

FN2 "Frendo" hereinafter refers to the entity that owned and operated the Orzinuovi plant at any given time, unless otherwise specified.

1988 Share Purchase Agreement

*2 Sometime after the conclusion of the joint venture, on April 28, 1988, defendant Whitman Corporation (then known as IC Industries, Inc.) and defendant Pneumo Abex (then known as PA Holdings Corporation) executed a stock purchase agreement (the "1988 Purchase Agreement"), under which Whitman agreed to sell to Pneumo Abex certain subsidiaries including defendant Abex Corporation ("Abex"), an entity that, in turn, owned 99.99% of the shares of Abex S.p.A., an Italian stock company. *See* First Am. Compl. Ex. C, § 1(a)(ii) & § 3(d), Pls.' 56-1, ¶ 12. At that time Abex S.p.A. owned and operated the Orzinuovi plant. *See id.*

Thereafter, a dispute arose between Whitman and Pneumo Abex concerning certain provisions of the 1988 Purchase Agreement. *See* First Am. Compl., Ex. G, p. 1. To resolve the dispute, on September 23, 1991, Whitman and Pneumo Abex entered into a settlement agreement (the "Settlement Agreement") providing, among other things, that Whitman and Pneumo Abex would amend the 1988 Purchase Agreement by executing a document entitled "Second Amendment to Stock Purchase Agreement dated April 28, 1988" (the "Second Amendment"). *See id.*, Ex. G, p. 2. That same day, September 23, 1991, Whitman and Pneumo Abex executed the Second Amendment, which the parties dated August 29, 1988. *See id.*, Ex. H. Section 2 of the Second Amendment amended Section 12(b)(vi) of the 1988 Purchase Agreement to read:

Seller hereby agrees to indemnify Buyer and its affiliates (including the Sold Subsidiaries) against and to hold them harmless from, any loss, liability, claim, damage or expense (including reasonable legal fees and expenses) suffered or incurred by Buyer or its affiliates for or on account of or arising from or in connection with:

(a) any noncompliance or failure to comply with, violation of, or breach of any Applicable Environmental Law, or

(b) statutory liability arising out of any releasing, spilling, dumping, burying, placing, storing or disposing of any substance classified, defined, identified or designated as hazardous or toxic at any time prior to August 29, 1990, pursuant to Applicable Environmental Law or within the meaning given to the term hazardous or toxic under any Applicable Environmental Law, or

(d) any investigation, proceeding, claim or allegation relating to any matter indemnifiable under (a) or (b) above.

Id.